

previously employed by others. CDM technology, for example, relies on the copper wire underlying the voice networks. Moreover, in contrast to Bell Atlantic's assertion, CDM technology does involve equipment associated with the "traditional voice switch."<sup>57</sup> Accordingly, it is essential that the ILECs open up their networks, including the copper loops, to comprehensive access by competing providers. Without guaranteed access to the full complement of network elements, the deployment of advanced telecommunications services by competing providers could be unnecessarily delayed contrary to the goals of section 706 of the 1996 Act.

Similarly, ONA unbundling serves the public interest because it allows competing advanced service providers to recombine telecommunications elements for more efficient, or niche, services that the ILEC may be unwilling to furnish. As the Commission noted in a 1990 decision, ONA serves the public interest because it allows providers to make more efficient use of the LEC network:

A major goal of ONA is to increase opportunities for ESPs to use the BOCs' regulated networks in highly efficient ways, enabling them to expand their markets for their present services, and develop new offerings as well, all to the benefit of consumers . . . promotion of efficient use of the network is one of the primary goals of the Communications Act.<sup>58</sup>

Finally, an exemption from unbundling requirements *at this time* could be particularly pernicious. Bell Atlantic has not demonstrated that competing ISPs or CLECs would have any other local high-speed broadband access options available to get to the end-user customer. Although Bell Atlantic claims that "the loops and other network elements . . . are available for rental as unbundled elements"<sup>59</sup> it cannot at this time demonstrate compliance with its UNE and other local competition obligations called for by the section 271 checklist.

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<sup>57</sup> Petition, page 21.

<sup>58</sup> *In the Matter of Computer III Remand Proceedings*, Report and Order, 5 FCC Rcd. 7719, 7720 (1990), *aff'd*, *California v. FCC*, 4 F.3d 1505 (9th Cir. 1993).

<sup>59</sup> Petition, page 21 (emphasis added).

## **2. No Truly Competitive Market for the Provision of High-Speed Broadband Services Will Emerge Without Resale**

TransWire believes that it is especially important for the Commission to keep the resale obligation intact for high-speed broadband services. It is readily apparent from the statutory structure that the section 251(c)(4)(a) resale obligations complement the ILECs' unbundling obligation to ensure a more competitive telecommunications market. Together, the two obligations permit providers to compete with the ILECs either by (a) recombining UNEs (which would likely entail interconnection and collocation) or (b) purchasing the ILECs' total retail service at cost, minus the ILECs' "avoided" costs. For the same reasons that the UNE obligation keeps consumer prices competitive, as discussed above, the wholesale resale obligation also serves the congressional intent to encourage local competition.

The resale obligation will also ensure that the introduction of high-speed broadband services is not a repeat of the ILECs' pricing decisions that delayed the deployment of ISDN: with the resale obligation, the ILECs cannot effectively stall the deployment of this new technology through excessively high tariff pricing. In addition, TransWire believes that high-speed broadband services may pose technical issues that would make it more difficult for competing providers to arrange easy and effective interconnection arrangements with the ILEC. For example, TransWire is aware that certain proposed xDSL arrangements would move the service further into the switch, making unbundled access more cumbersome. If such problems are borne out in the market, use of the resale obligation will be especially critical for competing providers.

Finally, TransWire notes that many ILECs, including Bell Atlantic, are active participants in the ADSL Forum, which is comprised of all the major hardware and software developers of xDSL. Thus, the ILECs, along with a select group of computer software and hardware giants, are now engaged in the ongoing development of the technical and architectural characteristics of xDSL services. This position provides the ILECs with ample business incentives to promote technical solutions favoring their own deployment, and hindering UNE access to xDSL by

competing providers. The wholesale resale obligation will function as a check against such potential design and deployment activities that are inimical to local competition in the high-speed broadband services market.

#### V. Conclusion

For the foregoing reasons, TransWire believes the authority sought by Bell Atlantic in its Petition seems unavailable due to the specific directives of the 1996 Act. In any event, it is premature for the Commission to act on the Bell Atlantic Petition at this time. Acting on such requests without the advantage of a deliberative rulemaking has the potential to impair the ability of other telecommunications providers to bring competition to the BOCs' in-region markets and could adversely affect the ability of competing providers to continue to innovate and enrich the advanced services enjoyed by American consumers.

Respectfully submitted,

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